

(3) by mailing it addressed to the person to be served at his residence or principal office. Service by mail is complete upon mailing.

(b) Filing of papers with clerk

All papers subsequent to the notice of contest required to be served upon the opposing party shall be filed with the Clerk either before service or within a reasonable time thereafter.

(c) Proof of service

Papers filed subsequent to the notice of contest shall be accompanied by proof of service showing the time and manner of service, made by affidavit of the person making service or by certificate of an attorney representing the party in whose behalf service is made. Failure to make proof of service does not affect the validity of such service.

(Pub. L. 91-138, § 5, Dec. 5, 1969, 83 Stat. 286.)

§ 385. Default of contestee

The failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest. Notwithstanding such failure, the burden is upon contestant to prove that the election results entitle him to contestee's seat.

(Pub. L. 91-138, § 6, Dec. 5, 1969, 83 Stat. 286.)

§ 386. Deposition

(a) Oral examination

Either party may take the testimony of any person, including the opposing party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the contested election case, or for both purposes. Depositions shall be taken only within the time for the taking of testimony prescribed in this section.

(b) Scope of examination

Witnesses may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending contested election case, whether it relates to the claim or defense of the examining party or the claim or defense of the opposing party, including the existence, description, nature, custody, condition and location of any books, papers, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. After the examining party has examined the witness the opposing party may cross examine.

(c) Order and time of taking testimony

The order in which the parties may take testimony shall be as follows:

(1) Contestant may take testimony within thirty days after service of the answer, or, if no answer is served within the time provided in section 383 of this title, within thirty days after the time for answer has expired.

(2) Contestee may take testimony within thirty days after contestant's time for taking testimony has expired.

(3) If contestee has taken any testimony or has filed testimonial affidavits or stipulations under section 387(c) of this title, contestant may

take rebuttal testimony within ten days after contestee's time for taking testimony has expired.

(d) Officer before whom testimony may be taken

Testimony shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(e) Subpena

Attendance of witnesses may be compelled by subpoena as provided in section 388 of this title.

(f) Taking of testimony by party or his agent

At the taking of testimony, a party may appear and act in person, or by his agent or attorney.

(g) Conduct of examination; recordation of testimony; notation of objections; interrogatories

The officer before whom testimony is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party served with a notice of deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(h) Examination of deposition by witness; signature of witness or officer; use of deposition

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and the parties. Any changes in the form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and note on the deposition the fact of the waiver or of the illness or the absence of the witness or the fact of refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the committee rules that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(Pub. L. 91-138, § 7, Dec. 5, 1969, 83 Stat. 286.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 387 of this title.

§ 387. Notice of depositions

(a) Time for service; form

A party desiring to take the deposition of any person upon oral examination shall serve writ-

ten notice on the opposing party not later than two days before the date of the examination. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. A copy of such notice, together with proof of such service thereof, shall be attached to the deposition when it is filed with the Clerk.

(b) Testimony by stipulation

By written stipulation of the parties, the deposition of a witness may be taken without notice. A copy of such stipulation shall be attached to the deposition when it is filed with the Clerk.

(c) Testimony by affidavit; time for filing

By written stipulation of the parties, the testimony of any witness of either party may be filed in the form of an affidavit by such witness or the parties may agree what a particular witness would testify to if his deposition were taken. Such testimonial affidavits or stipulations shall be filed within the time limits prescribed for the taking of testimony in section 386 of this title.

(Pub. L. 91-138, § 8, Dec. 5, 1969, 83 Stat. 287.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 386 of this title.

§ 388. Subpena for attendance at deposition

(a) Issuance

Upon application of any party, a subpena for attendance at a deposition shall be issued by:

- (1) a judge or clerk of the United States district court for the district in which the place of examination is located;
- (2) a judge or clerk of any court of record of the State in which the place of examination is located; or
- (3) a judge or clerk of any court of record of the county in which the place of examination is located.

(b) Time, method, and proof of service

Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 389 of this title. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.

(c) Place of examination

A witness may be required to attend an examination only in the county wherein he resides or is employed, or transacts his business in person, or is served with a subpena, or within forty miles of the place of service.

(d) Form

Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.

(e) Production of documents

A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made and in any event at or before the time specified in the subpena for compliance therewith, may (1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.

(Pub. L. 91-138, § 9, Dec. 5, 1969, 83 Stat. 288.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 386 of this title.

§ 389. Officer and witness fees

(a) Each judge, clerk of court, or other officer who issues any subpena or takes a deposition and each person who serves any subpena or other paper herein authorized shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the district courts of the United States.

(b) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpoenaed to appear before the House of Representatives or its committees.

(Pub. L. 91-138, § 10, Dec. 5, 1969, 83 Stat. 288.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 388 of this title.

§ 390. Penalty for failure to appear, testify, or produce documents

Every person who, having been subpoenaed as a witness under this chapter to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than \$1,000 nor less than \$100 or imprisonment for not less than one month nor more than twelve months, or both.

(Pub. L. 91-138, § 11, Dec. 5, 1969, 83 Stat. 288.)

§ 391. Certification and filing of depositions

(a) Sealing of papers; deposit with clerk

The officer before whom any deposition is taken shall certify thereon that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition, together with any papers produced by the witness and the notice of deposition or stipulation, if the deposition was taken without notice, in an envelope endorsed with the title of the contested election case and marked "Deposition of (here